国 际 民 用 航 空 组 织
工 作 文 件

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法律委员会 — 第 33 届会议

（2008 年 4 月 21 日 — 5 月 2 日，蒙特利尔）

议程项目 3：在非法干扰行为或一般风险情况下航空器对第三方造成损害的赔偿

关于在发生非法干扰情况下
航空器对第三方造成损害的赔偿的公约草案

补充赔偿机制（SCM）

（由德国提交）

1. INTRODUCTION

1.1 At its 182nd session the Council has decided to submit the Draft Convention on compensation for Damage Caused by Aircraft to Third Parties, in Case of Unlawful Interference to the 33rd session of the Legal Committee and requested that the Legal Committee takes into account the concerns raised by Germany in C-WP/13087 and pays attention to possible ways of protecting the interests of victims most efficiently and ensures the ratifiability of the revised Convention and the operability of the funding mechanism.

2. THE CURRENT DRAFT

2.1 The current draft foresees compensation in two layers. The first layer, 700 000 000 Special Drawing Rights (SDR) at maximum, is covered by the operator's insurance. For the second layer the draft establishes a Supplementary Compensation Mechanism (SCM) in Chapter III (Articles 8-18). The funding of the SCM relies on a universal passenger-ticket charge and an insurance-like mechanism of separate funds for each calendar year, attributing collected funds to States Parties and rolling over funds that have not been used for compensating victims of past acts of unlawful interference. The contributions are to be collected according to Article 12 as a departing fee in respect of each passenger and each tonne of cargo. The shortcomings of this approach and the resulting inoperability of the whole SCM are outlined in Working Papers that have been presented to the Special Group and are attached as Appendices A, B and C.

According to Article 17, paragraph 1, the States are obliged to ensure that the collection of the contributions by the airlines is conducted properly. And according to Article 17, paragraph 3, the State is liable for losses of the SCM occurring from airlines not paying the contributions.

2.2 These provisions are extremely complicated and imply a huge administrative burden for the respective State Party. They also constitute a grave financial risk for State Parties if they are liable for losses occurring from airlines not paying the contributions. The States cannot afford to be liable for the duties of the

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airlines. Furthermore the proposed model of financing the SCM does not cover all operators contributing to the risk of third party damage and who nevertheless are beneficiaries of the funds. General aviation is completely exempt from contributions, although many private flights on own account or fractional ownership flights, are operated with large aircraft and, because of the lower security regulations, even bear an increased risk of terrorist damage.

Even though it is vitally important to know how many contracting States would be needed in order to secure sufficient funding, no such calculation has been effected. The importance of this question is emphasized by the fact that the fund foreseen within the frame of the Globaltime-project has just failed due to lack of acceptance among the States.

3. 提案

3.1 目前，努力减少行政负担实属重要，这不仅是为了节省纳税人的金钱，也是为了实现透明和高效的管理。在消除官僚主义的同时，却接受另外一项管理责任，这难以自圆其说。此外，国家不具备审计运营人旅客载运量的资源。由于补充赔偿机制被作为限制运营人赔偿责任的一个理由，似乎可以想象，补充赔偿机制可以由航空运输业予以组织开展，而无需缔约国参与。

因此，德国建议不要在《罗马公约》现代化的框架内建立一个补充赔偿机制，而只建立一个赔偿责任制度即可。

3.2 但是，如果法律委员会认为，必须将补充赔偿机制纳入公约，则必须建立一个可操作的机制。目前的供资概念缺乏可操作性，因而无法保证第二层的受害者赔偿。由于收缴金与可能发生的损害绝对无关，因此，基于旅客模式框架内的供资无法带来公平的收费。因此，德国向特别小组提交了一个替代的供资模式，其中预见到了与航空器重量相联系的一种收费方式，因而与可能的损害联系起来。对该模式的说明载于所附的文件当中。理事会将该项工作委派给了法律委员会，要求虑及德国就补充赔偿机制的可行性提出的关切，并确保其可操作性。本文件包含了一份以重量为基础的收缴金制度的措辞建议（附录 D），它能够达到各项基本要求，如公平和透明的收费及收缴金的分摊，并且也符合实用性的问题。

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APPENDIX A

SPECIAL GROUP ON THE MODERNIZATION OF THE ROME CONVENTION OF 1952 (SG-MR)

Meeting of the Friends of the Chairman

(Brussels, 16 to 18 January 2007)

COMMENTS ON A FINANCING MODEL BASED ON THE NUMBER OF PASSENGERS ─ PROPOSAL OF A MODEL BASED ON THE WEIGHT OF THE AIRCRAFT ─

(Presented by Germany)

The financial concept for the Supplementary Compensation Mechanism has to satisfy the requirement of effecting a fair and transparent levying and assessment of contributions which is also in line with practicability. As is the case with every levying of insurance contributions, the contributions levied for a fund like the Supplementary Compensation Mechanism therefore have to be assessed, to the extent possible, according to the risk of damage or the probability of occurrence set by the individual member of the fund.

However, on this basis the levying of contributions assessed according to the number of passengers carried in the proposal of the coordinators LMBC and Singapore gives rise to considerable reservations:

1. The number of passengers carried is not a relevant factor for the assessment of the probability of damage caused to third parties and for the assessment of the probability of the Supplementary Compensation Mechanism having to make compensation payments to third parties who have suffered a damage.

2. The model presented does not cover all operators of aircraft who, by participating in air traffic, contribute to a risk of the occurrence of causing damage to third parties and to the probability of the Supplementary Compensation Mechanism having to make compensation payments and who participate in the fund.

- Exempt from contributions is general aviation, although many private flights, for example flights on own account or fractional ownership flights, are operated with large aircraft and, because of the lower security regulations, even bear an increased risk of terrorist damage;

- Exempt from contributions is also cargo transport for which the coordinators up to now have not submitted a proposal. Furthermore, the assessment of these contributions is very complicated. The model "1 SDR per passenger" cannot simply be transferred to cargo.

3. In order for a system based on numbers of passengers to work, the states would have to provide data on all the passengers who take off from or land in the country concerned. However, due to liberalised air traffic it is difficult to ascertain such data in Europe especially, which means that the proposed model is not practicable.

If, however, the contributions to the Supplementary Compensation Mechanism are based on the assessment of the risk set for occurrence of damage caused to third parties and payments by the Supplementary Compensation Mechanism to compensate for this damage, then two basic requirements will have to be made: All operators of all State Parties participating in the fund must pay contributions, the level of which is derived from the maximum take-off weight (MTOW) of the aircraft. This is due to the fact that the heavier an aircraft is and the larger the quantity of kerosene carried, the higher the probability of causing considerable damage to third parties and the higher the probability that the fund has to make payments to compensate for this damage.

Consequently, the same factors are relevant to the levying and assessment of contributions to the Supplementary Compensation Mechanism which, according to the Draft Convention, are already relevant to the extent of liability and the extent of the obligation to maintain insurance (Article 4, Article 8). These are already assessed according to the risk of damage caused to third parties which is based on the maximum take-off weight. Our proposal consists of the following:

- **The Convention states – as is the case in the current draft – that aircraft operators are obliged to make contribution payments to the fund.**

- **The level of the payments is assessed according to the maximum take-off weight of the aircraft of every operator of every State Party. For this purpose certain categories – possibly along the same lines as the categories of Article 4 – have to be established and for every one of these categories a certain level of contributions per annum has to be determined. As an alternative it would be possible to determine a certain contribution factor (X SDR) for a certain weight factor (e.g per 250, 500 or 1000 kg MTOW).**

- **These individual assessment parameters still have to be determined by the Task Force. This requires, on the one hand, the guarantee that the fund will have within good time sufficient means to pay compensation for a case of major damage (up to 3 billion SDR), but on the other hand that the contributions are reasonably adequate and acceptable to the airlines.**

- **An amount determined in this way for all the aircraft of every operator of a State Party has to be paid annually – in addition to the insurance for damage caused to third parties – by every operator of a State Party as contribution to the fund.**

Advantages of this kind of funding:

1. **Transparency**

The levying and assessment of contributions is fairly distributed – according to the extent of liability and the extent of the obligations to maintain insurance – by linking it to the probability of causing damage to third parties and the probability that the fund must step in. This reflects the fact that the risk of major damage increases with the size of the aircraft. The contribution to the fund which has to be paid is determined from the start and is thus a calculable factor.

2. **Fairness**

All aircraft operators of a State Party are included in the contribution system as potential parties responsible for damage. Commercial airlines have the possibility of passing on the contributions to passengers as well as to cargo.

3. Practicability

Since all aircraft are registered in certain states, it does not require much effort for the states to report the registered aircraft and to determine the individual maximum take-off weights. Furthermore, it is possible that the contributions to the fund are levied by and paid to the insurances, together with the contributions for the insurance for damage caused to third parties.

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APPENDIX B

TERMS OF REFERENCE OF THE SUPPLEMENTARY COMPENSATION MECHANISM TASK FORCE

WORKING PAPER ON CONTRIBUTIONS TO THE SCM (Point 4 of the Terms of Reference)

(Presented by Germany)

Financing concepts

The discussion of the fundamental basis of the contributions to the SCM focused on two different models: one is passenger-based and the other is MTOW-based (comments on a financing model based on the number of passengers - proposal of a model based on the weight of the aircraft“, presented by Germany for the meeting of the friends of the chair, Brussels, 16 – 18 January 2007, attached to this WP). The delegation of Germany invites the members of the group to take notice of the table enclosed, introducing figures of possible MTOW-based assessment of contributions to the fund and share the following observations as to the core-differences of these concepts.

1. Figures of possible MTOW-based assessment of contributions to the SCM

Category	**MTOW** (kg)	**SDR** (per plane/year)
1	< 500	300
2	< 1.000	600
3	< 2.700	1.200
4	< 6.000	10.000
5	< 12.000	25.000
6	< 25.000	35.000
7	< 50.000	40.000
8	< 200.000	45.000
9	< 500.000	50.000
10	> 500.000	60.000

– The figures in this table have been developed in close cooperation with the German airlines and airline insurers and should be understood as open for discussion.
– Adjustments can lead to any level of contributions to the fund that may be envisaged by any pax-based concept.
– An MTOW-based concept does not call for specific changes to the concept of collection of contributions, except that collection via ticketing is not possible.

2. Observations on core-differences of passenger-based and MTOW-based concepts

Passenger-based	**MTOW-based**
▪ not related to the potential damages	▪ directly related to the potential damages
▪ cargo not included	▪ cargo included
▪ general aviation not included	▪ general aviation included
▪ concentration of contributions on passengers ▪ only (augmentation of ticket-prices only)	▪ distribution of contributions on many shoulders (depending on pricing-policy of airlines for pax and cargo)
▪ collection of contributions: - assessment per ticket (per lag? relevance of hub-traffic? returned tickets?) - millions of single payments - huge administrative overhead (tracking of/accountance over payments) - unforeseeable overall amount of contributions to the fund - enforcement of contributions?	▪ collection of contributions: - single assessment per plane/year –little administrative action needed - single payment —neglectable administrative burden - volume of increase of the fund foreseeable and early known —(any amount achievable, no necessary difference to pax-based system) - easy to enforce
▪ to whom should refunds belong?	▪ refunds after closing pre-funding can go to airlines
▪ assistance to airlines in case of a drop down is borne by passenger-contributions	▪ assistance to airlines in case of a drop-down ▪ is borne by “airline-contributions”

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APPENDIX C

THE SUPPLEMENTARY COMPENSATION MECHANISM TASK FORCE

(Singapore, 7 to 11 May 2007)

REFLECTIONS ON A MTOW-BASED MODEL OF CONTRIBUTIONS TO THE SCM

(Presented by Germany in June 2007)

In the TASK FORCE session in Singapore, Germany presented the suggestion of a MTOW-based model of funding the SCM. The discussion included several points of special importance:

1. One point of special interest has been how the levying of the contributions would have to be effected. The answer to this is that one fundamental idea of the model is to rely exclusively on advance-payments that have to go directly from the operator to the fund. This would exclude any need for enforcing late payments and eliminate the risk of loosing contributions due to bankruptcy of operators. Furthermore direct payments would be the least expensive and at the same time the fastest procedure to deliver the contributions to the SCM.

2. Another point was the question on how airlines of non-contracting States would be enabled to cooperate with the fund. To solve this problem, the SCM should be open to direct payment by such airlines as well, be it only a fraction for a year.

3. This issue turned out to be closely linked to the question on how payment should effectively be ensured by the States Party. The proposition has in mind, that operators already have to demonstrate to the States they operate into, to fulfil insurance requirements. In the due course of this, they could as well demonstrate that the operator has contributed to the fund. If this requirement was not met, the States Party would be under the obligation to react in the same way as if the aircraft had not been properly insured. The administrative procedures for this should already be in place, the amount of additional workload would appear to be neglectably small.

4. In the course of the discussion it appeared to be useful to explain, that fixing amounts per aircraft, regardless of the use, an aircraft has been made of, not only is a prerequisite of a streamlined advance-payment basis of the contributions, but also reflects the fact, that any operator is by market mechanisms forced to make optimal use of each aircraft. Therefore it was deemed not to make much sense to go into details of counting passengers, cargo, kilometres or take-off and landing-procedures.

5. Placing the burden of the contribution on the operators would of course leave it to them, to decide in the customary way of calculating fees on how to distribute it to their clients. The operators should be in the best position to judge how this should be done.

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附录 D

对补充赔偿机制供资问题措词的建议

（由德国提交）

第三章

补充赔偿机制[1]

受本提议影响的现行草案	提议
第八条　补充赔偿机制 …… 2.　补充赔偿机制的宗旨如下： …… c)　履行直接符合这些宗旨的其他职能。	**第八条　补充赔偿机制** …… 2.　补充赔偿机制的宗旨如下： …… **c)　收取收缴金并管理其资金** **d)**　履行直接符合这些宗旨的其他职能。
第九条　缔约方会议 缔约方会议应当： …… e)　决定初始收缴金的缴交期限和金额，并确定缔约方会议下一次会议之前每年须向补充赔偿机制缴纳的收缴金；	**第九条　缔约方会议** 缔约方会议应当： …… e)　决定**根据第十五第一款暂时结束收取**；
第十条　缔约方会议举行会议 …… 4.　缔约国的多数构成缔约方会议举行会议所要求的法定人数。缔约方会议的决定由投票多数通过。第九条第 a)、b)、c)、d)、j)、和 l)项项下的决定由三分之二多数票通过。	**第十条　缔约方会议举行会议** …… 4.　缔约国的多数构成缔约方会议举行会议所要求的法定人数。缔约方会议的决定由投票多数通过。第十条第 a)、b)、c)、d)、**e**)、j)和 l)项项下的决定由三分之二多数票通过。

[1] 该机制名称尚未确定。

第十一条 秘书处和主任

[保持不变]

第十二条 补充赔偿机制的收缴金	第十二条 补充赔偿机制的收缴金[2]
补充赔偿机制的收缴金应当是针对从一缔约国机场离港的国际商业飞行所载的每位旅客和每[吨]货物收取的强制性金额。如果一缔约国在第二条第二款项下做了声明，还应当针对该缔约国国内两个机场之间离场的商业飞行所载的每位旅客和每[吨]货物收取此种金额。运营人应当收取该强制性金额并将其缴纳给补充赔偿机制。	补充赔偿机制的收缴金应当是强制性的针对任何运营人在任何一天在任一缔约国的空域实施飞行的航空器。

第十四条 确定收缴金额度的基础[3]	第十四条 确定收缴金额度的基础
[…]	[删除]

第十五条 初始收缴金和预先供资	第十五条 暂时结束为补充赔偿机制收取资金
1. 缔约方会议在其第一次会议上应当决定，从本公约对一缔约国生效时起，对从该缔约国离港的旅客和货物收取收缴金的期限和额度。如果一缔约国做出第二条第二款项下的声明，则应当从该项声明生效时起，针对声明范围内的离场飞行旅客和货物缴付初始收缴金。期限和额度对所有缔约国一律相等。 2. 收缴金额度的确定，应当确保可用的资金在四年内至少达到第十九条第二款规定的赔偿限额的 [25%] [100%]。如果可用的资金被认为足以在可预见的未来支付可能的赔偿或财务援助，并已达到该项限额的至少 [50%] [100%]，缔约方会议可以决定到下一次缔约方会议举行会议之前，不必进一步缴纳收缴金，但是对本公约后来对其生效的国家的离场旅客和货物，则收缴金的期限和额度均得予以适用。	1. 如果补充赔偿机制的资金被认为足以在可预见的未来支付可能的赔偿或财务援助，并已达到第十九条第二款项下最高赔偿限额的至少[50%] [100%]，便可做出为补充赔偿机制收取资金暂时结束的决定。 2. 即使缔约方会议做出暂时结束为补充赔偿机制收取资金的明确决定之后，其主要营业地在一缔约国的运营人需要继续向补充赔偿机制缴纳收缴金，直至该缔约国缴纳的收缴金年份与那些已缴纳了最高年份的缔约国相等。其主要营业地在一非缔约国的运营人，凡其航空器在仍需要向补充赔偿机制缴纳收缴金的缔约国实施飞行的，则需要继续缴纳补充赔偿机制收缴金。

[2] 最后条款可能对生效的门槛加以明确规定，以确保**收取的收缴金**足以维持补充赔偿机制的财务可存续性。
[3] 最后条款可能对生效的门槛加以明确规定，以确保有足够的旅客人数和货物量维持补充赔偿机制的财务可存续性。

第十六条　收缴金的收取

1.　缔约方会议应当在规章中设立一个透明的、问责的和有成本效益的机制以支持收缴金的收取和缴纳。在设立该机制时，缔约方会议应当努力避免强加不必要的负担。对拖欠的收缴金，应当按规章规定收取利息。

2.　运营人不向补充赔偿机制缴纳其所收取的收缴金的，主任应当针对此运营人采取适当的措施，以便收回应缴的金额。每一缔约国应当确保可以在其辖区内采取收回应缴金额的行动，而不论应收债务实际上发生在哪个缔约国。

第十六条　收缴金的收取

1.　补充赔偿机制须在每一缔约国保持一个银行帐户。

2.　为向补充赔偿机制及时缴纳收缴金，运营人必须为某种航空器事先向补充赔偿机制的任何银行帐户支付应付的最大起飞全重种类的金额，这种航空器按照第 **3** 款归类。单次支付必须

a)　使用特殊标示符提及每架航空器，

b)　列明航空器所属的最大起飞全重种类，

c)　列明支付涵盖的期限，

d)　纳入运营人识别和其主要营业地所在国的说明。

3.　为不同类型航空器缴纳的补充赔偿机制收缴金如下：

种类	最大起飞全重（千克）	特别提款权（每架飞机/每年）
1	<500	300
2	<1.000	600
3	<2.700	1.200
4	<6.000	10.000
5	<12.000	25.000
6	<25.000	35.000
7	<50.000	40.000
8	<200.000	45.000
9	<500.000	50.000
10	>500.000	60.000

此处所列金额须根据第二十九条加以审议。

4.　运营人可以根据第 **3** 款选择为每一航空器按一年支付应付金额，或按六个月、三个月、一个月或一天的相关份额。如果按下述支付：

a)　六个月，应付款部分根据第 **3** 款上调 **5%**，

b)　三个月，应付款部分根据第 **3** 款上调 **7.5%**，

	c) 一个月，应付款部分根据第 **3** 款上调 **10%**， **d)** 一天，应付款部分根据第 **3** 款上调 **20%**。 **5.** 为计算收缴金，与货币单位换算相关的时间点是支付之前的 **11** 月 **1** 日。除此之外，第二十八款亦适用。

第十七条 缔约国的义务	第十七条 缔约国的义务
1. 每一缔约国应当确保，在本公约项下产生的关于收取收缴金并将其向补充赔偿机制缴纳的一切义务均得到履行，并根据其法律采取一切适当措施，包括在认为必要时实施相关制裁，以便有效落实一切此种义务。 2. 每一缔约国应当确保向补充赔偿机制提供以下信息： a) 从该缔约国离港的国际商业飞行的旅客人数和货物数量；和 b) 实施这种飞行的运营人身份。 根据第二条第二款做出了声明的缔约国，还应当确保提供关于该缔约国境内两个机场之间离场商业飞行的旅客人数和货物数量，以及实施这种飞行的运营人身份的详细资料。在每一情况下，这种数据均得构成其中所述事实的表面证据。 3. 当一缔约国不履行其在本条第二款项下的义务而给补充赔偿机制造成损失时，该缔约国应当对此种损失负责。缔约方会议应当根据主任的建议，决定该缔约国是否应当赔偿这种损失。	每一缔约国应当要求所有运营人通过银行出具的正规文件事先证明已对于在其空域实施飞行的每架航空器向补充赔偿机制支付的收缴金，声明已做了支付并纳入第十六条第 **2** 款规定的细节。每一缔约国应当确保任何未向补充赔偿机制事先缴纳正确收缴金的航空器都被认为没有适当保险。 [**1.- 3.**：被删除]

第十八条 补充赔偿机制的资金

[保持不变]

—完—